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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**STATE OF MICHIGAN, STATE OF  
CALIFORNIA, et al.,**

Plaintiffs,

**v.**

**ELISABETH D. DEVOS, in her official  
capacity as the United States Secretary of  
Education, and UNITED STATES  
DEPARTMENT OF EDUCATION,**

Defendants.

Case No. 3:20-cv-04478-JD

**DECLARATION OF GARRETT M.  
LINDSEY IN SUPPORT OF  
STIPULATION TO SET BRIEFING  
SCHEDULE AND SET HEARING FOR  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Judge: Hon. James Donato  
Trial Date: None set  
Action Filed: July 7, 2020

1 I, Garrett M. Lindsey, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I  
3 could and would testify competently to the matters set forth below.

4 2. I am a Deputy Attorney General with the California Department of Justice, and am  
5 counsel of record for Plaintiff the State of California in this matter.

6 3. In Plaintiffs' motion for preliminary injunction (PI Motion) (ECF No. 35), Plaintiffs assert  
7 a likelihood of success on numerous statutory and constitutional claims, contesting Defendants'  
8 unlawful actions in promulgating guidance and regulations relating to public schools' and state  
9 educational entities' funding of "equitable services" for private school students using moneys  
10 appropriated by Congress to address the impact of the COVID-19 crisis on schools. Plaintiffs  
11 contend that Defendants have violated separation of powers principles, the Spending Clause of  
12 the U.S. Constitution, acted ultra vires and in excess of statutory authority in violation of the  
13 Administrative Procedure Act (APA), acted in an arbitrary and capricious manner in further  
14 violation of the APA, and failed to comply with the notice-and-comment requirements of  
15 rulemaking in violation of the APA.

16 4. In the PI Motion, Plaintiffs assert that Plaintiffs, their schools, and their students face  
17 imminent irreparable harm without a preliminary injunction. The PI Motion asserts that Plaintiffs  
18 and their schools will either lose significant emergency COVID-19 pandemic response funding or  
19 be significantly restricted in using those funds to respond to the challenges presented by the  
20 pandemic. Plaintiffs submitted 15 declarations from state education agencies and local school  
21 districts in support (ECF No. 35-2).

22 5. In the PI Motion, Plaintiffs assert that the balance of equities are in their favor and that an  
23 injunction is in the public interest.

24 6. As described in the stipulation, the parties agreed to a modified briefing schedule to  
25 accommodate the Defendants' request to file their opposition on July 30. On July 20, the Court  
26 ordered to the parties to proceed via an expedited briefing schedule (ECF No. 30), wherein the  
27 opposition to the motion for preliminary injunction would be filed on July 29, and the reply in  
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1 support would be filed on August 3. The stipulated briefing schedule would delay filing of the  
2 opposition by one day and delay filing of the reply by two days.

3 7. The parties further agreed to expedite the hearing date for Plaintiffs' PI Motion to address  
4 the imminent irreparable harm asserted by Plaintiffs. Quick resolution of Plaintiffs' PI Motion is  
5 imperative as the 2020-2021 school year commences in many school districts within the Plaintiff  
6 jurisdictions in August and clarity is needed to determine how CARES Act funding may be  
7 expended to prepare for the school year.

8 8. The modified briefing schedule and expedited hearing date would not otherwise affect the  
9 schedule for the case.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
11 and correct.

12 Executed on July 29, 2020, at Los Angeles, California.

13  
14 /s/ Garrett Lindsey  
15 GARRETT LINDSEY  
16 DEPUTY ATTORNEY GENERAL  
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